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In The

Supreme Court of the United States

October Term, 1994

ROBERT DAVIS, SR., PERSONAL REPRESENTATIVE of the ESTATE of ROBERT DAVIS, JR.; and JANICE SCHNEIDER, PERSONAL REPRESENTATIVE of the ESTATE of MATTHEW SCHNEIDER; and JOHN BAUER, PERSONAL REPRESENTATIVE of the ESTATE of JOHN DIETERICH,

Petitioners,

vs.

BENDER SHIPBUILDING and REPAIR CO., INC.,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

BLANE H. CRUTCHFIELD*
BRIAN P. MCCARTHY
*Counsel of Record

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
Post Office Box 123
Mobile, Alabama 36601
Phone: (205) 432-5511

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED FOR REVIEW

Whether the estates of Jones Act seamen who perished on the high seas can recover damages for the decedents' lost future earnings in a general maritime survival action brought against a non-Jones Act employer?

PARTIES TO PROCEEDING

Respondent Bender Shipbuilding and Repair Co., Inc. adopts the listing of parties set forth in the Petition for Writ of Certiorari. Pursuant to Rule 29.1, Sup. Ct. R., Respondent represents that it has no parent companies, subsidiaries or affiliates that have issued shares to the public.

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CITATIONS TO OPINIONS BELOW

Respondent adopts the citations to opinions set forth in the Petition for Writ of Certiorari.

JURISDICTION

Respondent adopts the basis for the Court's jurisdiction set forth in the Petition for Writ of Certiorari.

APPLICABLE STATUTES

Respondent agrees with the Petitioners' statement that the statutes involved in this proceeding are the Jones Act, 46 U.S.C.app. § 688 (1988), and the Death on the High Seas Act ("DOHSA"), 46 U.S.C.app. §§ 761-68 (1988). The pertinent provisions of these statutes are quoted in Petitioner's brief.

STATEMENT OF THE CASE

This is a maritime survival action, arising under the general maritime laws of the United States, and stemming from three deaths occurring on the high seas, *i.e.*, more than one marine league (three nautical miles) from shore. The decedents allegedly died while serving as crewmembers aboard the M/V ALEUTIAN ENTERPRISE when that vessel sank on the high seas on March 22, 1990. Petitioners are the personal representatives of the estates of the three unmarried Jones Act seamen who had no dependents. The only item of damages sought by Petitioners under this general maritime

law survival action is lost future earnings of the decedents, also referred to as loss of accumulation of estate.

The owners of the M/V ALEUTIAN ENTERPRISE filed a petition for limitation of liability, 46 U.S.C. §§ 181-189 (1988), in the United States District Court for the Western District of Washington. Petitioners herein filed claims in that limitation proceeding against the owners and the decedents' employer. After settling their claims against the owner of the M/V ALEUTIAN ENTERPRISE and the decedents' employer, Petitioners filed this general maritime law survival action against the Respondent, Bender Shipbuilding and Repair Co., Inc. (hereinafter "Bender"). The Petitioners alleged in their complaint that Bender negligently designed, built and installed components of the M/V ALEUTIAN ENTERPRISE, and that as a result of Bender's negligence, the decedents and their estates were damaged. The complaint states explicitly that this action is a survival action brought under the general maritime law in which the Petitioners seek to recover solely for decedents' lost future earnings and loss of accumulation of estate.

In response to the complaint, Bender filed a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, contending that lost future earnings are not recoverable under a general maritime law survival action arising out of the deaths of Jones Act seamen. On October 14, 1992, the district court entered an order granting Bender's motion to dismiss without issuing an opinion. On October 27, 1992, Petitioners filed their notice of appeal to the United States Court of Appeals for the Ninth Circuit. On June 21, 1994, a panel of the Ninth

Circuit affirmed the district court's dismissal. (*See* Appendix A contained in the Petition for Certiorari.)

SUMMARY OF THE ARGUMENT

The sole issue raised in this case, whether the lost future earnings of deceased Jones Act seamen are recoverable in a general maritime law survival action, is controlled by the Court's recent decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). Petitioners attempt to carve out an exception to *Miles*, the uniformity sought by that decision, and legislative activities in the field of maritime wrongful death, by contending that lost future earnings are recoverable in a general maritime law survival action brought against a non-Jones Act employer. However, this is a distinction without a difference. The Court's holding in *Miles* is clear and without limitation, and the Court did not reach its holding simply by referring to the Jones Act. Rather, the Court looked to DOHSA, the Jones Act, and the vast majority of state survival statutes, and concluded that the only way uniformity in maritime tort law could be achieved was by disallowing recovery for lost future earnings under a general maritime law survival action.

Contrary to Petitioners' assertions, there is no conflict within the circuits with regard to the precise issue raised herein. Indeed, the only two circuits to address this precise issue – the recoverability of lost future earnings through a general maritime law survival action in a non-Jones Act, DOHSA setting – have reached similar results and have denied recovery for this item of damages.

Certiorari is unnecessary to resurrect the issues disposed of by *Miles* and the Court should not exercise its discretionary authority to grant Petitioners' request for a Writ of Certiorari.

ARGUMENT/REASONS WHY THE WRIT SHOULD BE DENIED

I. *MILES V. APEX MARINE CORP.* CONTROLS THE INSTANT CASE, AND CERTIORARI IS NOT NECESSARY TO REVISIT THE ISSUES RAISED HEREIN.

Petitioners concede that neither the Jones Act nor DOHSA would permit recovery for the lost future income of the decedents. (*See* Petition for Writ of Certiorari, at 4). Consequently, an alternative route of recovery for this item of damages was employed, and the general maritime law's purported survival action was invoked as a means to effect such a recovery. Whether or not the general maritime law recognizes a survival action, however, is irrelevant to the issue of what damages can be recovered when statutory schemes are in place which impose limits on available damages. The decedents were seamen who perished upon the high seas and any claims for damages arising out of their deaths are jointly governed by the statutory frameworks of the Jones Act and DOHSA. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 36-37 (1990) (discussing damage limitations contained in Jones Act); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978) (discussing damage limitations contained in DOHSA).

The Court recently reiterated these principles in *Miles v. Apex Marine Corp.*, another case in the continuing struggle by counsel for similarly situated persons to judicially amend or repeal the provisions of the Jones Act and DOHSA. The holding and reasoning in *Miles* and its predecessor cases from this Court uniformly recognize the need for adherence to the legislation applicable to this area in order to provide uniformity in maritime tort law. *See, e.g., Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978).

In *Miles*, the Court was again called upon to address the interplay of judicially-created remedies and statutory remedies. *Miles* addressed the sole issue presented in the instant petition, and held that "a general maritime law survival action cannot include recovery for decedent's lost future earnings." *Miles v. Apex Marine Corp.*, 498 U.S. at 37. The petitioner therein, Mercedel Miles, was the mother of a Jones Act seaman killed in an unprovoked attack aboard the M/V ARCHON. She sued Apex Marine Corporation and Westchester Marine Shipping Company, the vessel's operators, Archon Marine Company, the charterer, and Aeron Marine Company, the vessel's owner, under the Jones Act and the general maritime law. *Miles* sought compensation for various damages, including the decedent's lost future wages.

The district court ruled that the decedent's estate could not recover for lost future wages. The Fifth Circuit affirmed that ruling, holding that the general maritime law does not permit a survival action for a decedent's lost future earnings. The Court granted certiorari to review that issue, along with other issues raised in the case which are unrelated to the instant petition.

The Court addressed the precise issue of whether the estate could recover the decedent's lost future earnings through a general maritime law survival action. In addressing that issue, the Court stressed the need for uniformity in maritime tort law. An additional consideration cited by the Court was the fact that lost future income occurring after the decedent's death is not recoverable in a survival action under either DOHSA or the Jones Act. Indeed, DOHSA contains no survival provision and the Jones Act's survival provision limits recovery to losses suffered during the decedent's lifetime. Moreover, the Court observed that the majority of state survival statutes do not allow an estate to recover decedent's lost future income. *Id.* at 35-36. Accordingly, the Court held that a general maritime survival action cannot include recovery for decedent's lost future earnings.

> We sail in occupied waters. Maritime tort law is now dominated by federal statute, and we are not free to expand remedies at will simply because it might work to the benefit of seamen and those dependent upon them. Congress has placed limits on recovery in survival actions that we cannot exceed.
>
> * * *
>
> We will not create, under our admiralty powers, a remedy that is disfavored by a clear majority of the States and that goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death. Because [the decedent's] estate cannot recover for his lost future income under the Jones Act, it cannot do so under the general maritime law.

> Cognizant of the constitutional relationship between the courts and Congress, we today act in accordance with the uniform plan of maritime tort law Congress created in DOHSA and the Jones Act. We hold that there is a general maritime cause of action for the wrongful death of a seaman, but that damages recoverable in such an action do not include loss of society. We also hold that a general maritime survival action cannot include recovery for decedent's lost future earnings.

Id. at 36-37.

Petitioners' attempt to craft an exception to *Miles*, based on the fact that Bender was not the decedents' Jones Act employer, is not well founded. The Court's holding in *Miles* is clear and without limitation. Indeed, the Court did not reach its holding simply by looking to the Jones Act. Rather, the Court looked to DOHSA, the Jones Act, and the majority of state survival statutes, and concluded that the only way uniformity in maritime tort law could be achieved was by disallowing recovery for lost future earnings under a general maritime law survival action. Clearly, the *Miles* decision, and its predecessor Supreme Court cases, preclude Petitioners from recovering lost future earnings and loss of accumulation of estate under a general maritime survival action.

Contrary to Petitioners' assertions, the holding of *Miles* was not limited to claims brought by the estates of deceased seamen against Jones Act employers. The Court did not draw any distinction between damages recoverable against the Jones Act employer and those recoverable against non-Jones Act employers, even though there were four defendants involved in that case and only one

Jones Act employer. The Petitioners are urging that this Court allow the anomaly of permitting the decedents' estates to recover damages for lost future earnings in a general maritime law survival action against a non-Jones Act employer when that action is not joined with a Jones Act claim, while the recovery of the same damages using the same survival action would be disallowed when that action is joined with a Jones Act claim. Not only does such a result defy logic and common sense, it is antithetical to the uniformity in maritime tort law which the *Miles* decision sought to achieve.

Both the district court and the appellate court below, properly interpreting *Miles*, determined as a matter of law that Petitioners could not recover the lost future income of the decedents under a general maritime law survival action. Contrary to Petitioners' assertions, this reliance on *Miles* was not misplaced, and certiorari should not be granted to resurrect this issue.

II. PETITIONERS MAY NOT RECOVER DAMAGES FOR LOST FUTURE EARNINGS OR LOSS OF ACCUMULATION OF ESTATE UNDER A GENERAL MARITIME LAW SURVIVAL ACTION BECAUSE THE CLAIMS ARISE OUT OF DEATHS ON THE HIGH SEAS.

Petitioners contend that the Court of Appeals erred in affirming the dismissal of Petitioners' complaint on the basis that Respondent was not the Jones Act employer of the decedent seamen, and that the decedents' status as Jones Act seamen should not have been taken into consideration by the court. However, the decedents' status as Jones Act seamen was not the sole determinative factor in

the underlying decisions dismissing the Petitioners' complaint.

Because the decedents perished on the high seas, the statutory framework of DOHSA governs Petitioners' claims and precludes recovery for the decedents lost future earnings. *Miles* clearly established that, by enacting DOHSA, "Congress [spoke] directly to the question of recoverable damages on the high seas, and 'when it does speak directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that [DOHSA] becomes meaningless.' " *Miles*, 498 U.S. at 31 (quoting *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978)). The decision below correctly applied DOHSA and its statutory limits on recoverable damages for actions stemming from deaths on the high seas, regardless of the identity or status of the decedents:

> *Miles* instructs the lower federal courts that a claim for lost future earnings is not available in connection with a maritime death for which Congress has already provided a remedy and has excluded such damages.

Davis v. Bender Shipbuilding & Repair Co., Inc., 27 F.3d 426, 430 (9th Cir. 1994).

The only other Circuit to date that has addressed the recoverability of lost future earnings by a decedent's estate in a non-Jones Act, DOHSA setting held that the general maritime law does not permit recovery of a decedent's lost future earnings in a survival action. *Preston v. Frantz*, 11 F.3d 357, 358 (2d Cir. 1993) (citing *Wahlstrom v. Kawasaki Heavy Industries, Ltd.*, 4 F.3d 1084 (2d Cir. 1993)).

The plaintiffs in *Preston v. Frantz* were the non-dependent parents of a helicopter passenger who was killed in a crash on the high seas while en route from Connecticut to Nantucket Island. The district court dismissed the plaintiffs' state law claims for survival damages, concluding that Connecticut law, unlike federal maritime law, allows the recovery of lost future earnings in survival actions and was thus inconsistent with and preempted by the survival action under general maritime law. *Preston*, 11 F.3d at 358. Relying on *Wahlstrom v. Kawasaki Heavy Industries, supra*, which was decided while the Prestons' appeal was pending, the Second Circuit affirmed the district court's holding that lost future earnings could not be recovered under a general maritime law survival action. *Preston*, 11 F.3d at 358.

In their effort to overcome the preclusive effects of *Wahlstrom*, the plaintiffs contended that *Wahlstrom* was wrongly decided; *Wahlstrom* relied on *Miles v. Apex Marine Corp.*, and it was argued that *Miles* should be applied only to cases involving Jones Act seamen. The Second Circuit eschewed this reasoning:

> The language of the conclusion in *Miles* is not limited to Jones Act seamen. Further, even if *Miles* were applicable only to Jones Act seamen, it would not render our decision in *Wahlstrom* infirm. "[I]n view of the special regard accorded by admiralty to seamen," *Wahlstrom*, 4 F.3d at 1092, it would be anomalous to allow a nonseaman's estate to recover for lost future wages when a seaman's estate, under *Miles*, would not be entitled to such recovery.

Preston, 11 F.3d at 358 (internal citations omitted); see also *Wahlstrom v. Kawasaki Heavy Industries, Ltd.*, 4 F.3d 1084 (2d Cir. 1993), where the Second Circuit declined to permit the recovery of lost future earnings pursuant to a general maritime law survival action arising out of a death in state territorial waters:

> The Supreme Court disallowed such a recovery in *Miles*. *See* 498 U.S. at 33-37. The Court's analysis relied heavily upon the decedent's status as a seaman and the resultant applicability of the Jones Act, *see id.* at 35-36, but the announced conclusion of its opinion (unlike the companion ruling as to loss of society) was not confined to seamen. *See id.* at 37 ("We . . . hold that a general maritime survival action cannot include recovery for decedent's lost future earnings.").

Id. at 1093.

The issue of available damages in a non-Jones Act, DOHSA setting was also addressed in *Denniston v. Boeing Company*, 1991 AMC 2080 (N.D. N.Y. 1991). The district court in *Denniston* held that DOHSA preempts a general maritime law survival action for lost future earnings or loss of inheritable estate. Plaintiffs were the administrators of the estates of three non-seamen who died in a helicopter crash on the high seas. A DOHSA action was brought and accompanied by a general maritime law survival action seeking to recover the decedents' lost future earnings. The court found that the incident clearly fell within the field of operation of DOHSA, and that the plaintiffs could not recover, via a general maritime law survival action, an element of damages explicitly precluded by DOHSA:

> [T]his court concludes that on the issue of lost future wages it would be unwise to render a policy decision favorable to the plaintiffs. In contrast to the pain and suffering aspect of a survival claim, the loss of future wages aspect overlaps with damages available in a wrongful death claim. Under the circumstances at bar, the pecuniary losses available under the DOHSA extend into the survival claim for lost future wages. Given that overlap, it is this court's opinion that the DOHSA represents "Congress' considered judgment" on the manner in which a DOHSA decedent's lost future wages may be recovered. As a result, this court is "not free to 'supplement' Congress' answer." Plaintiffs may not maintain a survival claim for the decedents' lost future wages.

Id. at 2097-98 (internal citations omitted). In a footnote, the *Denniston* court went on to note: "Subsequent to the writing of this section of the court's opinion, the Supreme Court in *Miles v. Apex Marine Corp.*, 498 U.S. [19], 1991 AMC 1 (November 6, 1990), also held that in a general maritime survival action the estate cannot recover a decedent's lost future earnings." *Id.* at 2098, n.13.

In support of their contention that the Respondent's status as a non-Jones Act employer should permit the recovery of lost future earnings pursuant to a general maritime law survival action, Petitioners rely on the following cases: *Sutton v. Earles*, 26 F.3d 903 (9th Cir. 1994); *Sugden v. Puget Sound Tug & Barge Co.*, 796 F.2d 455 (W.D. Wash. 1992); *Rebstock v. Sonat Offshore Drilling*, 764 F.Supp. 75 (E.D. La. 1991); *Garner v. Dravo Basic Materials Co.*, 768 F.Supp. 192 (S.D. W.Va. 1991); and *Mussa v. Cleveland Tankers*, 802 F.Supp. 88 (E.D. Mich. 1992). These

cases are distinguishable from the instant case, and, as demonstrated below, Petitioners' reliance upon them is totally misplaced.

In *Sugden* and *Rebstock*, the plaintiffs sought to recover non-pecuniary loss of society damages for wrongful deaths which occurred in state waters, not on the high seas. Unlike the instant case, the statutory workings of DOHSA were not specifically applicable in those cases. Indeed, the courts in *Sugden* and *Rebstock* clearly implied that had DOHSA or another federal statute been applicable, they would have held that *Miles* would have precluded the loss of society claims. *See Sugden*, 796 F.Supp at 457; *Rebstock*, 764 F.Supp. at 76. Similarly, Petitioners' reliance on *Sutton* is misplaced as the wrongful death involved therein also occurred in state waters where DOHSA's statutory limits on recoverable damages are not specifically applicable. *See Sutton*, 26 F.3d at 916.

Contrary to Petitioners' assertion, *Garner v. Dravo Basic Materials Co., supra*, did not involve a general maritime law survival action. Instead, the issue in that case was whether lost future earnings were recoverable under a general maritime law wrongful death action. Moreover, and similar to the inapposite cases of *Sutton, Sugden* and *Rebstock* distinguished *supra, Garner* involved a wrongful death that occurred in state waters, not on the high seas. Unlike the instant case, the effects of the Jones Act and DOHSA were not specifically applicable in *Garner* and no concern for uniformity with existing federal statutes existed. The *Garner* court, however, made it quite clear that had DOHSA been applicable, plaintiff's recovery would have had to have been uniform and consistent with that statute. *See Garner*, 768 F.Supp. at 194-95.

Finally, the Petitioners' reliance on *Mussa v. Cleveland Tankers, supra,* is also misplaced. Again, unlike the instant case, the effect of DOHSA on available damages was not specifically addressed in *Mussa* and no concern for uniformity with an existing federal statute existed. Furthermore, and equally important, the *Mussa* case did not address whether lost future earnings are recoverable under a general maritime law survival action. In fact, the *Mussa* case involved claims arising out of a personal injury, not a wrongful death, and therefore did not address any issue related to general maritime law survival claims. *See Mussa,* 802 F.Supp. at 89-90.

In sum, the effect of DOHSA on recoverable damages was not an issue in any of the cases relied upon by the Petitioners. The district court and the appellate court in the instant case properly applied *Miles* in holding that the Petitioners could not skirt DOHSA's limits on damages through the use of a judicially-crafted remedy, regardless of the identity or status (e.g. non-Jones Act employer) of the targeted defendant. To draw such a distinction defies logic and common sense, and runs contrary to the desire for uniformity in maritime tort law which *Miles* sought to achieve.

Likewise, Petitioners err in stating that the Ninth Circuit's decision was premised on the conclusion that DOHSA preempts general maritime law survival claims. Taking their cue from the Court's decision to fashion a general maritime wrongful death action, *Moragne v. States Marine Lines, Inc.,* 398 U.S. 375 (1970), some lower federal courts have acknowledged the existence of a general maritime law survival action. *See, e.g., Law v. Sea Drilling Corp.,* 523 F.2d 793 (5th Cir. 1975); *Spiller v. Thomas M.*

Lowe, Jr. & Assocs., Inc., 466 F.2d 903 (8th Cir. 1972). The Petitioner in *Miles* urged the Court to recognize a general maritime law survival right. The Court declined to address this issue "because its resolution is unnecessary to [our] decision on the narrow question presented: whether the income decedent would have earned but for his death is recoverable. We hold that it is not." *Miles*, 498 U.S. at 34.

Like the Court in *Miles*, the Ninth Circuit in the instant case held that the decedents' estates could not recover for this item of damages. Additionally, and again in parallel fashion to *Miles*, it was unnecessary for the Ninth Circuit in the instant case to reach the issue of the existence *vel non* of a general maritime law survival action. Indeed, the Ninth Circuit did not address this issue at any point in its decision below. Despite Petitioners' efforts to characterize their claims as general maritime law survival actions, the appellate court recognized that it sailed in waters occupied by DOHSA, and was thereby precluded from expanding the remedies available under this statutory scheme. *Compare Davis*, 27 F.3d at 430 (Petitioners denied recovery for loss of future income because "DOHSA does not permit such damages . . . . ") *with Sutton v. Earles*, 26 F.3d 903, 919-20 (9th Cir. 1994) (Recovery of lost future earnings permitted because there was no applicable federal statute imposing a similar damage limitation).

III. THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR ANY OTHER UNITED STATES COURT OF APPEALS OR STATE COURT OF LAST RESORT.

In an effort to bring their Petition for Writ of Certiorari within the ambit of Rule 10, Sup. Ct. R., the Petitioners assert that the decision of the Ninth Circuit is in conflict with decisions of the Ninth Circuit itself, the Fifth Circuit Court of Appeals, and numerous decisions of the federal district courts. It should be noted initially that conflicts among the district courts do not generally support the exercise of the Court's discretion in a petition for certiorari. *See* Sup. Ct. R. 10.1. Likewise, an intra-circuit split, which the Petitioners allege to exist within the Ninth Circuit, is fodder for en banc consideration, not discretionary review by the Court. Moreover, respondent submits that no intra-circuit split exists in the Ninth Circuit, and that the case of *Sutton v. Earles*, 26 F.3d 903 (9th Cir. 1994), is not at odds with the results reached in the instant case. Because the incident in *Sutton* occurred in territorial waters, the limitations of DOHSA – which are implicated in the instant case – did not play a role in the Ninth Circuit's decision.

The Petitioners' contention that the instant decision is in conflict with *Azzopardi v. Ocean Drilling & Exploration Corp.*, 742 F.2d 890 (5th Cir. 1984), is without merit. First, the alleged "conflict" is premised upon the Petitioners' assertion that the Ninth Circuit in the instant case held that DOHSA preempts a general maritime law survival claim. As discussed *supra*, the Ninth Circuit did not reach the issue of the preemptive effects of DOHSA on the right

to assert a general maritime law survival action. Just as the Court in *Miles* found it unnecessary to reach the issue of the existence *vel non* of a general maritime law survival action, the appellate court below only reached the issue of whether an item of damages – lost future earnings or loss of accumulation of estate – was recoverable in a general maritime law survival action stemming from deaths occurring on the high seas.

Additionally, the Petitioners' attempt to manufacture a conflict between the Ninth and Fifth Circuits should be viewed in context of intervening precedents. Although the Fifth Circuit in *Azzopardi* held that the plaintiff could supplement DOHSA with a general maritime survival action for pre-death pain and suffering experienced by the decedent, the Fifth Circuit did not address in that case whether the plaintiff could recover lost future earnings in a general maritime law survival action. The Fifth Circuit in *Miles v. Melrose*, 882 F.2d 976 (5th Cir. 1989), *aff'd*, 498 U.S. 19 (1990), and the Supreme Court in *Miles v. Apex Marine Corp.*, *supra*, have clearly limited the effect of *Azzopardi* by holding that lost future earnings are not recoverable under a general maritime law survival action. Therefore, the alleged inter-circuit conflict cited by the Petitioners does not exist.

Moreover, the only two circuits that have directly addressed the issue presented here have reached uniform results. Both the Second Circuit in *Preston v. Frantz*, 11 F.3d 357 (2d Cir. 1993) and the Ninth Circuit in the instant case have held that lost future earnings are not available in a general maritime law survival action arising from deaths on the high seas. Instead of conflict among the

circuits as alleged by the Petitioners, there is uniformity with respect to the precise issue presented herein.

CONCLUSION

Relying on *Miles v. Apex Marine Corp.*, the courts below correctly held that, as a matter of law, the Petitioners could not recover the decedents' lost future earnings or loss of accumulation of estate in a general maritime survival action. In this Petition for Writ of Certiorari, the Petitioners have not shown any valid basis which would warrant the Court's exercising its discretionary authority, through the grant of certiorari, to revisit the issues previously decided by *Miles*. Therefore, the instant Petition for Writ of Certiorari should be DENIED.

Respectfully submitted,

BLANE H. CRUTCHFIELD*
BRIAN P. MCCARTHY
*Counsel of Record

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
Post Office Box 123
Mobile, Alabama 36601
Phone: (205) 432-5511

Attorneys for Respondents